



**DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420**

MESSAGE FROM THE CHIEF OF STAFF

During my involvement in Veterans' issues, I have seen the beneficial effects of recommendations from the Department of Veterans Affairs (VA) advisory committees. Many VA policy changes, whether mandated by statute or undertaken administratively, have been topics of advisory committee deliberations.

This publication, the VA Advisory Committee Management Guide, is designed as the principal tool to ensure that VA carries out its responsibilities to the committees we manage and to the Federal agency which monitors our compliance with the Federal Advisory Committee Act. This publication will be particularly helpful to the Designated Federal Officials and committee support staff who have been assigned to VA's committees. I encourage those employees to become familiar with the contents of this Guide, follow its instructions closely, and work with the Committee Management Office to manage our committees and produce the best possible recommendations.

While this Guide is intended primarily for committee managers, senior VA officials should also be familiar with its contents. Effective advisory committee management cannot be achieved without the involvement of VA's leadership team. I expect all senior officials here at VA to join me in making themselves available for advisory committee meetings and substantively engaged in responding to advisory committee recommendations.

The Secretary values the input of VA's advisory committees and is committed to ensuring that their recommendations will improve the lives of the Veterans, their families, and Survivors whom we are privileged to serve.


Jose D. Riojas
Chief of Staff

DEPARTMENT OF VETERANS AFFAIRS



Advisory Committee Management

GUIDE

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Department of Veterans Affairs Advisory Committee Management Guide

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INTRODUCTION

This publication, VA's Federal Advisory Committee Management Guide, is designed as the principle tool to ensure that VA carries out its responsibilities under FACA. This Guide provides guidance and general information on committee management policies and procedures and will be particularly helpful to Committee managers and DFOs who have been appointed to manage the day-to-day operations of VA's advisory committees.

An electronic version of this handbook is available on the Advisory Committee Management Office (ACMO) Web site (<http://www.va.gov/advisory/>) and as committee management policies and procedures change, updates will be posted on the Web site. In addition, if you need advice or clarification on a topic, please contact the Advisory Committee Management Office staff at VA.Advisory.cmte@va.gov.

It is our hope that this Guide will be a helpful tool to assist you to carry out your responsibilities for VA's Federal advisory committees.

Advisory Committee Management Office

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Background

Advisory committees are used extensively by VA and agencies throughout the Federal Government to obtain objective advice and recommendations regarding programs and policies.

Many private citizens, from virtually every segment of our society, serve on Federal advisory committees throughout the Nation. Those citizens willingly offer their expertise to assess government programs and recommend program changes to improve the delivery of benefits and services to the American people. This advice is available to the Federal Government at relatively little cost.

VA recognizes the value of advisory committees and uses them extensively to obtain objective advice and recommendations on matters of importance to VA and the Veterans we serve. VA advisory committee members include stakeholders, such as Veterans and Veterans Service Organizations (VSO), and subject matter experts in areas ranging from education, homelessness, and benefits, to readjustment and scientific research.

While most VA advisory committees hold meetings in Washington, DC, some conduct site visits as appropriate and hold town hall meetings at local VA facilities (benefits offices, hospitals, and cemeteries). Advisory committees meet regularly with VA's senior leadership, and they receive frequent briefings by program managers in subject areas related to the committees' duties.

VA's CMO is responsible for working with the DFO of each committee to ensure charters are established and renewed for continuing operations of committees, members are selected in a timely manner, Federal Register Notices are prepared to announce meetings, conflict of interest documents are reviewed and evaluated, and annual and special reports are compiled and forwarded to appropriate officials.

The DFO is responsible for the day-to-day operations of the advisory committees and plans the meetings, prepares reports and minutes of the meetings, and other committee operations.

ACMO is responsible for the oversight of all VA Federal advisory committees by directing and managing all phases of committee management policy and developing and disseminating policy to VA staff as well as to advisory committee members. These policies and procedures guide DFOs and committee support staff to ensure that applicable laws, regulations, and policies are understood and adhered to in the

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establishment and renewal of committees, the nomination and appointment of all committee members, and the various reporting duties required by law.

Federal Advisory Committee Act (FACA) (Public Law 92-463)

FACA, Title 5 United States Code (U.S.C.) App. 2, was enacted on October 6, 1972. To ensure that advice provided to agencies by Federal advisory committees is objective and accessible to the public, Congress established a legal framework to govern the creation and operation of advisory committees in the Executive Branch of the Federal Government.

Specifically, Congress determined that:

- The need for many existing committees had not been reviewed;
- New committees should be established only when determined to be essential;
- Committees should be terminated when they are no longer needed;
- There should be standard and uniform procedures governing the operation of committees;
- Congress and the public should be kept informed of the number, purpose, membership activities, and costs of advisory committees; and
- The function of advisory committees should be advisory only.

In order to accomplish this, FACA outlines general responsibilities of Federal officials involved with committee management and broad guidelines for the operation of advisory committees.

Government in the Sunshine Act (5 U.S.C. § 552b)

The Government in the Sunshine Act, 5 U.S.C. § 552b, was enacted to ensure that certain government meetings are open. Subsection (c) includes 10 exemptions that allow an agency to close all or part of an agency's meetings, including Federal advisory committee meetings. Meetings may be closed in accordance with subsection (c) to protect certain types of information, including trade secrets, commercial or financial information obtained from an individual, or information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. §§ 552b(c)(4) and (6).

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Freedom of Information Act (FOIA) (5 U.S.C. 552)

The Freedom of Information Act, 5 U.S.C. 552, sets standards for determining which records held by government agencies must be made available to the public and which records may be withheld. Pursuant to section 10(b) of FACA, the records of Federal advisory committees generally must be made available for public inspection and copying and the public does not need to submit a FOIA request to access these records. However, if there is a reasonable expectation that records sought fall within exemptions set forth in 552(b) of FOIA, they may be withheld.

Privacy Act (5 U.S.C. § 552a)

Congress found that in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it was necessary to regulate the collection, maintenance, use, and dissemination of information collected by such agencies. The purpose of the Privacy Act is to provide safeguards for an individual against an invasion of personal privacy. Records of members of advisory committees are subject to The Privacy Act. <http://www.justice.gov/opcl/privstat.htm>.

FACA Final Rule (41 CFR Parts 101-6 and 102-3)

The Final Rule is an administrative document promulgated by the General Services Administration (GSA) that provides interpretive guidelines for FACA. For example, FACA requires that meetings be announced timely in the Federal Register. The Final Rule specifies that a notice must be published at least 15 days before the meeting.

Executive Order 12024

Signed by President Jimmy Carter on December 1, 1977, this Executive Order (EO) transferred to GSA the authority for administering FACA. The EO delegated to the Administrator of GSA the functions vested in the President by FACA.

Executive Order 12838

Signed by President Clinton on February 10, 1993, this EO directed agencies to reduce by one-third the number of discretionary advisory committees and required a compelling justification for the establishment of any new discretionary committees.

STRUCTURE OF ADVISORY COMMITTEES

Purpose of Advisory Committees

Advisory committees are defined as any committee, board, commission, council, conference, panel, task force, or other similar group, which is established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Types of Members and Their Purpose

Chair: The Committee Chair is a member of the committee selected by the appointing authority. The Chair of a committee presides at all meetings of the committee, makes sure the agenda is adhered to as closely as possible, ensures public participation, and certifies the accuracy of meeting minutes. The Chair ensures that all rules of order and conduct are maintained during each meeting. If the Chair must leave the meeting due to a conflict of interest, that individual appoints another committee member/DFO to preside. When a committee member(s) may not participate in committee discussions due to a conflict of interest situation, the Chair ensures that the member(s) does not participate and physically leaves the room.

Special Government Employees (SGE): An SGE is an individual appointed based on expertise that will contribute to the committee's objectives. As defined in 18 U.S.C. § 202, an SGE is an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. SGEs must review and comply with the standards of ethical conduct for employees of the executive branch.

Ex-officio Members: An ex-officio member is a Federal official who represents his or her agency and possesses expertise in a subject matter related to the committee's objectives. Ex-officio members have full voting rights unless otherwise stated in the charter or the committee's authorizing legislation.

Representatives: A representative is an individual who serves on an advisory committee to provide it with the point of view of a nongovernmental entity.

Regular Government Employees: Full-time employees of the Federal Government.

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Consultants: Consultants are not members of advisory committees but may be invited to subcommittee or parent committee meetings. They do not deliberate, vote on committee recommendations, or count toward the quorum.

Subcommittees/Workgroups

Subcommittees or workgroups generally are not subject to FACA and report to their parent advisory committee. They are convened to gather information, conduct research, draft position papers, and analyze relevant issues and facts. While subcommittees or workgroups are not subject to FACA, their activities generally are covered by the charter of the parent committee.

ROLES AND RESPONSIBILITIES

Committee Management Officer (CMO)

CMO is responsible for the oversight of all VA advisory committees established and operated under FACA. This includes:

- Exercising control and supervising the establishment, procedures, and accomplishments of advisory committees established by that agency;
- Assembling and maintaining the reports, records, and other papers of any such committee during its existence;
- Carrying out, on behalf of that agency, the provisions of section 552 of title 5, U.S.C., with respect to such reports, records, and other papers;
- Preparing various annual and intermittent reports on behalf of VA related to advisory committees, organization, activities, costs, etc., carried out on behalf of the agency, the provisions of section 552 of title 5 U.S.C., with respect to such reports, records, and other papers;
- Providing advice and training to the committee management community at VA;
- Developing and disseminating policy regarding committee management, ensuring consistency in the implementation of committee management policies and procedures, and devising internal management controls for committee management at VA;

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- Establishing uniform administrative guidelines and management controls for advisory committees;
- Developing streamlined procedures for committee management functions;
- Overseeing and developing the database of committees, members, and committee costs;
- Consulting with the Office of General Counsel (OGC) regarding the interpretation of applicable laws and regulations and disseminating this information for the committee management community; and
- Working closely with GSA's Committee Management Secretariat regarding the reporting of the yearly achievements and costs of VA's advisory committees and coordinating FACA training for VA staff.

Designated Federal Officer (DFO)

Many of the duties and responsibilities of the DFO are set forth in sections 10(e) and 10(f) of FACA. The DFO must:

- Approve or call the meeting of the advisory committee;
- Approve the agenda;
- Attend all meetings (or make arrangements for an alternate DFO to attend);
- Adjourn the meeting when such adjournment is in the public interest or in the best interest of the government; and
- Chair the meeting when so directed by the agency head.

In addition to the responsibilities required by FACA, the DFO may be required to:

- Ensure that accurate records are kept of the committee's deliberations; maintain the records, reports, transcripts, minutes, working papers, drafts, studies, agenda, or other documents that are made available to or are prepared for or by an advisory committee;

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- Coordinate with General Counsel's Ethics Specialty Team (EST) for ethics training for those committees requiring training or if, for other committees, the members who desire training. For those committees required to file financial disclosure reports, the DFO is responsible for ensuring that members submit their reports to the DFO or to the EST at least 2 weeks prior to the first meeting of the calendar year.
- Prepare minutes following the meeting and ensure they are certified by the Chair;
- Send the agenda and copies of all related information to the members before the meeting; make logistical arrangements for the meeting including overnight accommodations for members when applicable, notify members of these arrangements; and arrange for resource persons, guest speakers, and supplementary materials when needed;
- Provide information for or prepare the Federal Register notice; notify individuals or organizations that have requested notification in advance; and use press releases and notices in professional journals, as appropriate;
- Keep all committee documents which are made available to or prepared by the advisory committee and adhere to the applicable Records Control Schedules;
- Ensure timely appointing of new advisory committee members, and establishing, renewing, amending, or terminating a committee's charter;
- Maintain communication with the Chair during the meeting and make sure that the committee business is conducted according to all applicable regulations, policies, and procedures; and
- Work closely with VA's CMO to ensure all these tasks are accomplished in a timely manner, in accordance with VA policy and FACA.

Committee Management Staff

Committee management responsibilities reside at several different levels at VA. Staff duties may include:

- Providing technical assistance to DFO's to prepare amendments or renewal charter packages for committees as necessary;

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- Providing technical assistance to DFO's to prepare nomination and appointment documents for membership on advisory committees;
- Submitting Federal Register notices for timely notification to the public of advisory committee meetings;
- Advising VA staff on current policies and procedures; and
- Preparing reports on VA committees.

Committee Management Secretariat, GSA

Section 7 of FACA required the Administrator of GSA to establish and maintain a Committee Management Secretariat that is responsible for all matters relating to advisory committees. The Committee Management Secretariat responsibilities include:

- Prescribing administrative guidelines and management controls applicable to advisory committees; and
- Where applicable, providing advice, assistance, and guidance to advisory committees to improve their performance.

CHARTERING ADVISORY COMMITTEES

Federal advisory committees in VA may not be established unless such establishment is specifically authorized by statute, by the President, or the Secretary of Veterans Affairs. Discretionary (non-statutory) advisory committees will be established only after the Secretary has determined, after consultation with GSA, that the specific functions and duties cannot be adequately performed by existing VA offices, by working relationships within or between departments or agencies of the Federal Government, or by existing Federal advisory committees. A Federal advisory committee may be requested if:

- Committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;
- Committee recommendations will result in significant improvements in service or reductions in costs; or
- Committee recommendations will provide an important additional perspective or viewpoint affecting agency operations.

Which Groups Must be Chartered:

All groups that meet the criteria specified in FACA and its implementing regulations must be chartered in accordance with section 9(c). Unless an exception applies, FACA is applicable to “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official’s responsibilities.”

Title 41 Code of Federal Regulations (CFR) § 102-3.25.

Pursuant to 41 CFR § 103-3.40, groups not covered by FACA include:

- Committees exempted by statute;
- Groups assembled to obtain individual advice;
- Groups assembled to exchange facts or information;
- Intergovernmental committees
- Intragovernmental committees;
- Local civic groups;
- Groups established to advise State or local officials; and
- Operational committees.

Establishing a New Committee

ACMO staff are responsible for handling the establishment of all VA Federal advisory committees. If a program office believes there is a need for a new VA advisory committee, their leadership should consult with VA’s CMO for guidance.

No advisory committee may meet or take any action until a charter has been filed by VA’s CMO in accordance with FACA. The purpose of the advisory committee charter is to specify the committee’s mission or charge and general operational characteristics (not membership behavior). **The charter must include all of the statutorily required components, and should include five other components (*) that are not explicitly**

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required (at this time) but are recommended by GSA and improve the overall charter and provide valuable additional information for interested parties.

The 15 sections of the charter, in order, are:

- Committee's Official Designation (Title). Provide the committee's exact legal name.
- *Authority. Provide the authority for the establishment of the committee (E.G., cite the statute, Executive Order, or note that the committee is agency authority) and reference that the committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.
- Objectives and Scope of Activities. Describe the objectives and scope of the committee's mission or charge.
- Description of Duties. Describe the particular functions the committee is expected to perform. In the absence of specific statutory authority or Presidential directive to the contrary, these duties must be advisory only.
- Agency or Official to Whom the Committee Reports. Identify the agency or official (by title or position) to whom the advisory committee provides its advice. Normally, this is the agency head.
- Support. Identify the agency (and component/office) responsible for providing necessary support for the committee.
- Estimated Annual Operating Costs and Staff Years. Provide the estimated annual fiscal year costs to operate the advisory committee in dollars and staff years (in full-time equivalent, or FTE). The cost expenditure categories used in the Annual Comprehensive Review of Federal Advisory Committees should be used to estimate these costs. The cost estimates include the salary cost of staff support with benefits.
- *DFO. This paragraph should indicate that a full-time or permanent part-time employee, appointed in accordance with agency procedures, will serve as the DFO (or designee). It should also state that the DFO will approve or call all of the advisory committee's and subcommittees' meetings, prepare and approve all

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meeting agendas, attend all committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the advisory committee reports.

- **Estimated Number and Frequency of Meetings.** Provide the estimated number of meetings anticipated within a fiscal year and, if known, how frequently (e.g., “approximately every 4 months”) the meetings will occur.
- **Duration.** State the period of time anticipated to be necessary for the advisory committee to carry out its purposes. For a committee that will exist for a longer period, “continuing” is appropriate.
- **Termination.** Provide the committee’s termination date, if less than 2 years from the date of the committee’s establishment.
- ***Membership and Designation.** Provide the estimated number of members, a description of the expertise required, and/or groups to be represented in order to achieve a fairly balanced membership and whether the committee will be composed of SGEs, Representative members, Regular Government Employees, or members from several categories.
- ***Subcommittees.** Provide a statement as to whom (the agency) has the authority to create subcommittees and states that subcommittees must report back to the parent committee, and must not provide advice or work products directly to the agency.
- ***Recordkeeping.** State that the records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2, or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.
- **Filing Date.** This is the date that the charter is filed with Congress.

Charters may contain additional information, such as the roles and responsibilities of members and staff and may define the quorum for meetings. Like other advisory committee records and charters are public documents.

Committee Charter Package

Certain documents generally are included in a charter package when a Federal advisory committee is established. All proposed charters for the establishment of a new committee should be submitted in draft form for review by the CMO prior to submitting a final charter package for formal concurrence. In addition, the CMO will institute a consultation with GSA to ensure the charter meets all legal and regulatory requirements.

Discretionary Advisory Committee:

- Action memorandum to the Secretary to request a committee
- Proposed Charter
- Formal Determination
- Delegation of Authority to Appoint Members (if applicable)
- Financial Operating Plan
- Proposed Plan for Balanced Membership
- Filing letters and envelopes
- Electronic copy of all documents in the package

Statutory Advisory Committee:

- Action memorandum to the Secretary explaining the statutory authority for the Committee
- Proposed Charter
- Delegation of Authority to Appoint Members (if applicable)
- Financial Operating Plan
- Proposed Plan for Balanced Membership
- Copy of legislative authority
- Filing letters and envelopes
- Electronic copy of all documents in the package

Presidential Advisory Committee:

- Action memorandum to the Secretary explaining the authority or requirement for the Committee
- Proposed Charter

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- Copy of Establishing Authority
- Electronic copy of all documents in the package
- Filing letters and envelopes

A Federal advisory committee is not officially established until the following have been completed:

- The Secretary or designated official has signed the charter;
- A public announcement of the establishment of a discretionary committee has been made in the Federal Register by the initiating organization 15 calendar days prior to the CMO filing the committee's charter; and
- The charters are filed with the appropriate Congressional Committees, the Library of Congress, and the Committee Management Secretariat at GSA by the CMO, in accordance with FACA.

Renewing a Committee Charter

Unless otherwise provided by statute, Federal advisory committees terminate no later than 2 years after their chartering or last renewal by appropriate action prior to the end of that 2-year period. Certain documents are incorporated into a charter package for the renewal request, depending on the committee type, as stated below.

Discretionary Advisory Committee:

- Action memorandum to the Secretary to Request Renewal
- Proposed Charter
- Delegation of Authority to appoint members (if applicable)
- Proposed Plan for Balanced Membership
- Financial Operating Plan
- Current Charter
- Electronic copy of all documents in the package
- Filing letters and envelopes

Statutory Advisory Committee:

- Action memorandum to the Secretary to Request Renewal
- Proposed Charter
- Delegation of Authority to Appoint Members (if applicable)

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- Proposed Plan for Balanced Membership
- Copy of legislative authority
- Financial Operating Plan
- Current Charter
- Electronic copy of all documents in the package
- Filing letters and envelopes

Presidential Advisory Committee:

- Action memorandum to the Secretary to Request Renewal
- Notice of Renewal
- Proposed Charter
- Copy of Authority to Continue
- Proposed Plan for Balanced Membership
- Current Charter
- Electronic copy of all documents in the package
- Filing letters and envelopes

A Federal advisory committee is not officially renewed until the following steps have been completed:

- The Secretary has approved and signed the charter; and
- The charter has been filed with the appropriate Congressional Committees, the Library of Congress, and the Committee Management Secretariat of GSA by the CMO, in accordance with FACA.

Note: A notice to the public in the Federal Register is required when a discretionary advisory committee is established, renewed, or reestablished.

Amending an Existing Charter

Charters of committees may be amended for a variety of reasons. Most amendments are minor and made to reflect a change in budget, staffing, or supporting office.

Required Documents for Charter Amendments:

- Action memorandum to the Secretary to request to amend a Charter
- Amended section(s) of the Charter
- Copy of legislative authority or authority to continue

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- Current charter
- Electronic copy of all documents in this package
- Filing letters and envelopes

The Secretary must approve all charter amendments. Consultation with GSA is required for major charter amendments.

Terminating/Abolishing a Committee

According to 41 CFR § 102-3.30(b), committees must be terminated when:

- The stated objectives of the committee have been accomplished;
- The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;
- The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;
- In the case of a discretionary advisory committee, upon the expiration of a period not to exceed 2 years, unless renewed;
- In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed 2 years, unless renewed by the authority of the President; or
- In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

To terminate a statutory committee for which the statutory authority has not expired, specific legislation is required. A non-statutory committee is most easily terminated when its renewal is under consideration. In this case, if it is determined that the committee should be terminated, appropriate officials must be notified and the committee's charter may then be allowed to lapse.

Documents Required:

- Termination or abolition of *discretionary advisory committees* requires the submission of a request by the program office to VA's CMO for a) approval to allow a committee charter to expire; or b) approval to abolish a committee, which

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has completed its assigned tasks or whose existence is no longer deemed necessary.

- Termination or abolition of *statutory advisory committees*, other than upon expiration of the statutory authority (sunset date), requires a request from the Secretary to the Speaker of the House to repeal the statute. Legislation must be introduced and passed by Congress to eliminate statutory committees that are no longer needed. If a statutory committee has a sunset date written into its authorizing legislation, the committee terminates on that date and no further documentation is required.

Placing a Committee on Administratively Inactive Status

Under some circumstances, an advisory committee may be placed on Administratively Inactive status, such as:

- If a committee's establishing legislation does not have a sunset clause and VA, in consultation with VA's OGC and GSA determines that:
 - The committee has accomplished its goals;
 - Another committee is doing the same work; or
 - The operational costs of the committee outweigh its benefits.

Documents Required:

- White paper prepared by the committee DFO and signed by the program office leadership outlining the salient points about placing the committee on Administratively Inactive status.
- OGC perspective on placing the committee on Administratively Inactive status.
- Office of Congressional and Legislative Affairs perspective on placing the committee on Administratively Inactive status.
- GSA perspective on placing the committee on Administratively Inactive status.
- Copy of the committee's Annual Comprehensive Review (ACR) for the past year.
- Relevant statutes:
 - Copy of the FACA.
 - Copy of the legislation which established the committee.
- Copy of most recent charter of the committee; and
- Copy of the charter for the committee which is doing the same work, if applicable.

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The CMO will prepare the Decision Paper for the Chief of Staff and will ensure it is entered into the Department's electronic tracking system and tracked through until final decision and will then inform the program office and DFO.

NOMINATIONS, SELECTIONS, AND APPOINTMENTS

NOTE: AS OF JULY 2014, ALL MEMBERSHIP PACKAGES MUST HAVE OGC CONCURRENCE. PLEASE ENSURE THIS IS REQUESTED AS YOUR PACKAGE BEGINS THE CONCURRENCE PROCESS.

Purpose

Persons are nominated, selected, and appointed to a VA Federal advisory committee based on their qualifications and ability to contribute to the accomplishment of the committee's objectives. The statutory authority or charter that establishes the committee often includes specific requirements for committee membership. Other criteria related to membership are contained in VA policy and committee membership balance plans.

Selection Criteria

One of VA's principal objectives in managing its advisory committees is to ensure that committee members appropriately reflect the diversity of American society and the Veteran population. In the selection of members for discretionary committees, VA is required to consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature of the advisory committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed. Each committee shall represent, to the extent possible, members with diverse professional and personal qualifications: experience in military service, military deployments, working with Veterans, committee subject matter expertise, and working in large and complex organizations.

As a matter of VA policy, committee size generally is limited to 12 members, unless otherwise specified or required by the committee's authorizing statute. Membership above 12 for any existing or future advisory committee will require specific justification by the DFO, in consultation with the CMO and the affected VA program office. Ex-officio members are not counted when considering the 12-member limit. These policies do not apply to the following VA advisory committees that engage in scientific peer review of VA research:

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- Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee;
- Health Services Research and Development Service Scientific Merit Review Board;
- Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; and
- Rehabilitation Research and Development Service Scientific Merit Review Board.

These policies also do not apply to VA's Voluntary Service National Advisory Committee, which is composed entirely of representative members appointed by Veterans Service Organizations.

Terms of Appointment:

General - A committee member generally may serve no longer than two terms of 2 to 3 years unless the committee's authorizing legislation states otherwise or unless the DFO of the committee, in consultation with the CMO, provides specific justification in a membership approval package for additional terms of service. All other committee members whose service exceeds two terms will complete their service at the end of the current term. To the extent possible, terms will be staggered to ensure that the dates for termination of the members' terms are not all the same.

Vacancies – Vacancies may occur when a member resigns, dies, his/her service is terminated for any reason before the scheduled term is completed, or the member completes his/her term of appointment.

Reappointments – It is Departmental policy to avoid excessive individual memberships on advisory committees. Therefore, restrictions may apply to advisory committee membership. Absent specific justification, a VA committee member generally should not:

- Serve continuously as a member of any single advisory committee for more than 6 years (i.e. two, 3-year terms); or
- Serve for more than 8 combined years within a period of 12 years on one or more committees within an agency.

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Composition of Committees:

If not specified by statute, the general composition of each advisory committee is set forth in the committee's charter.

Special Government Employees - Most VA advisory committee members are SGEs. An SGE is a private citizen appointed based on expertise that will contribute to the committee's objectives. SGE's serve for 130 days or less during any period of 365 consecutive days, render personal opinions only, and are subject to the ethics laws governing Executive Branch employees.

Ex-Officio Members - A Federal official who represents his or her agency and possesses expertise in the subject matter. This person has full voting rights unless otherwise stated in the charter or legislation.

Representative - A non-voting member, also known as a representative. This person represents a special interest group, an organization, or an affected population. This designation generally is used only by the VA Voluntary Service National Advisory Committee, as they represent various Veterans service organizations whose members volunteer at VA facilities.

Compensation of Advisory Committee Members:

Special Government Employees - The stipend or honorarium paid to committee members who serve as SGEs is established by the Secretary of VA. Exceptions to this policy may be approved by the Chief of Staff for scientists and medical specialists.

Full-time Federal Employees - Members are not eligible to receive a consultant fee and must travel under a Federal travel order.

Sources for Obtaining Candidates

Solicitation of names of individuals in a given area may come from leaders in pertinent fields, scientific and professional organizations, and staff. Nominees may also be received from Agency officials, members of Congress, the general public, current or former committee members, universities and colleges. VA is occasionally using Federal Register notices to seek nominations.

Nomination Procedures

A nomination package, including for member renewals, should be prepared and sent to the Secretary 90 days in advance to ensure continuity of committee membership. The proposed nomination slate should include members appointed by the Secretary.

Use the following uniform format when submitting nomination packages to the Secretary. NOTE: This process may be a bit different in the case of a committee with a delegated appointment authority.

- Action Memorandum for Recommended Nominees
- Current Charter
- Authorizing Legislation/Executive Order
- Current Membership Roster
- Professional Area Breakdown
- Biographies
- Letters of Appointment
- Enclosures to the letters of Appointment are:
 - Copy of Current Charter
 - 14 General Principles of Ethical Conduct
 - Ethics Rules of Committee Members Who Are Special Government Employees

Note: When seeking to reappoint a member who has already served two or more terms, the packet must include specific justification by the DFO, in consultation with the CMO and affected VA program office for the additional term of service.

Financial Disclosure

Currently, there are five VA advisory committees that must file the Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report:

- Advisory Committee on Cemeteries and Memorials;
- Advisory Committee on Prosthetics and Special-Disabilities Programs;
- Special Medical Advisory Group;
- Advisory Committee on the Structural Safety of Department of Veterans Affairs Facilities; and
- Advisory Committee on Disability Compensation.

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The remaining committees are exempt from this requirement. OGC must conduct a review of the OGE 450 **before** the SGE is nominated. The potential SGE will complete, sign, and submit an OGC 450 prior to their nomination. A new SGE on a filing committee should not be appointed until after the EST certifies the OGE Form 450, Financial Disclosure Report. The Ethics Rules for SGE's (found in the Appendix) should be given to a potential SGE before their appointment and they submit their acknowledgement form along with the OGE Form 450. A potential SGE may decide not to serve on a filing committee if they learn that an ethics rule may impact them.

Completed forms are provided by the DFO to the OGC EST in a confidential envelope or the member (or potential member) may email their information directly to EST. Upon receipt of the completed forms, a member of EST:

- Reviews the forms for completeness, accuracy, and possible conflict of interest; and
- If a conflict of interest exists, the appropriate attorney must consult with the nominee. If there is still a conflict of interest after consulting with the nominee, the individual will not be appointed and the OGE Form 450 will be returned to the nominee.

Orientation of New Members

The DFO provides orientation to the members regarding the purpose and goals of the committee, including their responsibilities to the committee, the agency and ethics training by the appropriate official.

Termination of Committee Members

Expiration of Membership Terms

When members have completed their terms and rotate off a committee, no special type of paperwork is required.

Resignations

If a member resigns from the committee, a notification to the DFO is necessary, preferably by letter. The DFO forwards that information to ACMO. The FACA database will be updated to reflect the end of that member's term.

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Other Types of Term Ends

These may include death of a member. The DFO notifies ACMO of the death and the database will be updated to reflect the end of that member's term.

Letters and Certificates of Appreciation

As members complete their service on a VA Federal advisory committee or leave for other reasons, a letter of appreciation should be prepared for the signature of the Secretary as well as a Certificate of Appreciation, also signed by the Secretary, which will be prepared by ACMO. The letter of appreciation should be part of the membership package that the DFO prepared. The DFO should send a request for a Certificate of Appointment to ACMO including the members' name, credentials, term of service, and whether they served as a member or chair of the committee for processing.

ADVISORY COMMITTEE MEETINGS

No meeting shall be held in the absence of the DFO. Unless otherwise established in the charter of the committee or legislation, a quorum shall consist of a majority (more than one half) of the committee's authorized membership including ex-officio members. Each meeting of a committee shall be conducted in accordance with an approved agenda. If simultaneous subcommittee meetings are to be held, each subcommittee shall have a full-time Federal employee in attendance serving as the DFO.

Federal Register Notices

The Federal Advisory Committee Act requires that:

- **Section 10 (a)(1) - Each advisory committee meeting shall be open to the public.**
- **Section 10(a)(2) - Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register.**

The Federal Register is a legal publication in which the Executive Branch of the U.S. Government publishes regulations, orders, and other documents. The Federal Register is issued weekdays by the Office of the Federal Register.
(<https://www.federalregister.gov/>)

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Federal Register Notices of Meeting must be published in the Federal Register at least 15 calendar days prior to an advisory committee meeting.

Federal Register Notices will include:

- The name of the advisory committee;
- The time, date, place, and purpose of the meeting;
- A summary of the agenda and/or topics to be discussed;
- A statement whether all or part of the meeting is open to the public or closed; if closed, state the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. § 552b)(c)) as the basis for closure; and
- The name, address, and telephone number of the committee's DFO or other official who may be contacted for additional information concerning the meeting.

The approved package must be provided to ACMO no later than **30 days** before the meeting.

It is ACMO policy that a cancellation or amended notice of a previously announced meeting must be submitted to the Federal Register at least 15 days in advance of the original meeting date.

Responsibilities of the Designated Federal Officer (DFO) Include:

Before the meeting, the DFO:

- Approves the plan to hold a committee meeting;
- If necessary, coordinates with the OGC EST regarding ethics training and submission of financial disclosure reports;
- Approves the agenda;
- Invites the guest speaker(s) to a committee meeting, subcommittee meeting, or workshop, and makes necessary arrangements for the speaker(s) (if applicable);
- Ensures the agenda includes:
 - Concise descriptions of each major subject or issue listed in the agenda;
 - Priority and timing of topics; and
 - Grouping together the open and closed sessions, if any, of the meeting, for the convenience of the public.

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- Ensures committee members receive the agenda and copies of all information relating to the meeting;
- Arranges for resource persons and supplementary materials to aid the committee in dealing with agenda items;
- Makes recording arrangements for transcripts, if necessary;
- Ensures logistical arrangements for the meeting including arranging overnight accommodations for members;
- Notifies the public of the meetings and also:
 - Maintains a list of persons and organizations who have requested notification of a meeting and notifies them in advance; and
 - Ensures that all meeting notices (including cancellation and amendment notices) are published in the Federal Register no later than 15 calendar days prior to the committee meeting in accordance with Section 10 (a)(I) of FACA.

To close all or part of an advisory committee meeting, the DFO must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102–3.150.

(b) *Seek General Counsel review.* OGC or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

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(d) *Ensure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

The agenda is still arranged so that members of the public are informed about being able to attend the open part(s) of the meeting.

During the meeting, the DFO:

- Confers with the Chair as needed.
- May chair meeting in the Chair's absence.
- Maintains an attendance log.
- Ensures that the committee conducts its business in accordance with all applicable regulations, policies, and procedures.
- Ensures that accurate records are kept of the committee's deliberations. Reminds members and other attendees that advance review materials, meeting reviews, discussions, and committee recommendations on applications are to be treated confidentially.
- Records motions and votes on each item of business and takes notes on discussions and proceedings, as necessary, to prepare the minutes.
- Authorizes the premature adjournment of any committee meeting if adjournment is in the best interest of the government. Also, authorizes adjournment of any meeting not considered to be in the public interest, such as unwarranted departure from the agenda of the meeting.

Public Participants:

- May attend the open portion of the meeting.
- Any member of the public may speak to or otherwise address the advisory committee when the procedures for doing so are published in the Federal Register notice.

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- Must be allowed to submit written statements to the DFO as provided for in the Federal Register notice. Public participants should be advised that committee members are given copies of all written statements submitted by the public.

After the meeting, the DFO:

- Ensures the Chair of the committee certifies the minutes within 90 days.
- Ensures that stipends and travel vouchers are processed.

MINUTES/ TRANSCRIPTS/ RECORDS/

All records, reports, and other documents of each advisory committee must be available for public inspection and copying pursuant to FACA. VA employees are required to retain Federal records in accordance with record retention schedules as required by the Federal Records Act, the regulations implemented by the National Archives and Records Administration and VA Directive 6300, Records and Information Management. VA employees must preserve records containing adequate and proper documentation of the organization, function, policies, decisions, procedures, and essential transactions of the agency. The documents referred to include the records, reports, transcripts, minutes, working papers, drafts, studies, agenda, or other documents made available to or prepared for or by each advisory committee.

Minutes/Transcripts

Detailed minutes are kept by the DFO or designee, of each advisory committee meeting and subcommittee meeting.

By law, the minutes must include the following:

- The time, date, and place of the meeting;
- A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;
- An accurate description of each matter discussed and the resolution, if any, made by the committee regarding such matter;
- Copies of each report or other document received, issued, or approved by the committee;

Minutes must be prepared, reviewed, and certified by the Chair within 90 days of the meeting. Immediately after certification by the Chair, the minutes should be added to the GSA FACA database and forwarded to ACOM.

Records Maintenance and Disposal

All advisory committee records are maintained and disposed of in accordance with the following provisions:

- VA Directive 6300, Records and Information Management
- General Records Schedule 6.2 (when it becomes final)

This directive provides policy for VA's Records Management program, which includes records management, micrographics management, vital records, Privacy Act, FOIA, Computer Matching and Privacy Protection Act, Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Release of Names and Addresses.

The provisions of this directive are applicable to all elements of VA.

In addition, all committee records should be maintained and disposed with the provisions below:

- Part 102-193, Chapter 102 of the Federal Management Regulation

This part prescribes policies and procedures related to GSA's role to provide guidance on economic and effective records management for the creation, maintenance and use of Federal agencies' records.

Also, see regulations issued by the National Archives and Records Administration (section 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act, 44 U.S.C. Chapter 22.

Public Access to Records

Advisory committee records must be available for inspection and copying at a single location. The DFO or ACMO will make available to any person requesting them, copies of the transcripts of minutes of committee proceedings or meetings at a cost determined in accordance with the appropriate fee schedule.

FINANCIAL DISCLOSURE AND ETHICS

The purpose of the following guidance is to alert SGEs to potential ethics issues that may arise in connection with their service on a VA advisory committee so that they may seek advice from a VA deputy ethics official when advisable. Following such advice provides SGEs with a “safe harbor” under the government ethics rules, which is not available if they follow advice from others.

Who is an SGE? SGEs are individuals who have been appointed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Most VA advisory committee members are SGEs and are subject to the rules discussed below. However, a member is not an SGE if appointed to the committee to represent the official views of an outside organization and thus would not be subject to the rules discussed in this section. A member is also not an SGE if he or she is already a regular employee of another Federal entity, such as an ex-officio member appointed to a committee.

Financial Disclosure. SGEs are required under the Ethics in Government Act to file financial disclosure reports when first appointed and annually thereafter. However, the VA Designated Agency Ethics Official (DAEO) may exclude committee members from the filing requirement based on the particular duties and responsibilities of the committee and has done so with respect to all but five committees.

Currently, the committees whose SGEs must file financial disclosure forms are:

- Advisory Committee on Disability Compensation;
- Advisory Committee on Cemeteries and Memorials;
- Advisory Committee on Prosthetics and Special-Disabilities Programs;
- Special Medical Advisory Group; and

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- Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities.

The remaining committees are exempt from this requirement.

A new SGE on a filing committee should not be appointed until after the EST certifies the OGE Form 450, Financial Disclosure Report. The DFO's of the committees required to file will notify members before they are appointed and annually prior to the committee's first meeting of the calendar year. **If an SGE is required to file a financial disclosure report, that member may not participate in a meeting until the report is reviewed and certified by an agency ethics official.** If required to file, the DFO should have an SGE submit his or her original completed report no later than 2 weeks prior to the first meeting of the year to the EST (GovernmentEthics@va.gov).

Questions or Ethics Advice. For ethics questions or advice, SGEs should contact the OGC's EST at (202) 461-7694 or by email at GovernmentEthics@va.gov.

Most VA ethics questions can be answered in a telephone call. More than half of ethics questions are **resolved the same day** they are raised. Seeking ethics advice from an ethics official before acting and complying with that advice will generally protect an SGE from criminal prosecution.

Office of General Counsel (OGC)

- Provides legal advice and interpretation of FACA as needed;
- Reviews OGE Form 450 submitted by members for those committees required to submit them, advises each member as to potential conflicts, and certifies those reports which are technically complete and reveal no conflicts of interest.
- Attends committee meetings as necessary to address questions and issues about compliance with restrictions on participation, financial disclosures, and other matters related to ethics laws and standards of conduct.

Federal Advisory Committee Members Appointed as Special Government Employees

- Reads and acknowledges receipt of the "Standards of Ethical Conduct for Employees of the Executive Branch" and other ethics training materials provided

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in the Appendix. Only newly appointed SGEs must review these materials - it is not an annual requirement.

- For committees whose members are required to file financial disclosure reports, they must accurately complete and submit OGE Form 450 before accepting an appointment so the EST may review their information to determine if a conflict of interest exists and then certify the form.
- For committees whose members are required to file financial disclosure reports, voluntarily and promptly submits amended OGE Form 450 annually.
- Publicly discloses any qualitative change in financial interests or professional business relationships that is or might be perceived as a conflict of interest at the beginning of each meeting.
- Recuses himself or herself from participating in any meeting or portion of a meeting or other activity where he or she would give advice or participate in a particular matter which might have a direct and predictable effect on his or financial interests or those of an organization which the member serves as an employee, officer, director, trustee, or general partner. However, the member may participate in such matter if the conflicting financial interest arises only because the particular matter would affect the interests of his or her outside employer as part of class and not have a unique impact on his or her outside employer.

ADVISORY COMMITTEE REPORTS

Annual Comprehensive Review of Federal Advisory Committees

ACMO coordinates the Department's submission of the fiscal year review. GSA will periodically issue instructions regarding requirements and procedures. GSA will use this information to prepare program recommendations and status reports on advisory committee matters.

As required by section 7(b) of FACA, as amended, GSA's Committee Management Secretariat must conduct an ACR of the activities and responsibilities of each Federal advisory committee to determine:

- Whether such committee is carrying out its purpose;

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- Whether consistent with the provisions of applicable statutes, the responsibilities assigned it should be revised;
- Whether it should be merged with other advisory committees; or
- Whether it should be abolished.

Each year, the program offices begin preparing the individual committee reports by gathering information on actual costs for the fiscal year and estimating costs for the next fiscal year; all meeting dates; updating committee member information; and the activities and accomplishments of each advisory committee. The ACMO staff reviews the reports for completeness and accuracy. After reviewing, the CMO marks the reports as verified. The Department Committee Management Officer compiles all the reports for the entire Department and forwards this single report to GSA. GSA combines all the reports from each agency that has advisory committees under FACA into a single report which also contains statistical data regarding all advisory committees.

Annual Operations Plan

In accordance with VA policy, each advisory committee shall submit an annual Operations Plan. The Plan should include specific areas of committee interest for the upcoming year, the approximate date(s) of any expected recommendations, reports, official communications or other deliverables from the committee and any proposed engagement with the Secretary, Deputy Secretary, or Chief of Staff.

The annual Operations Plan is due to ACMO no later than **December 1** of each year and must be signed by the DFO and the committee Chair after consultation with the affected VA program officials. Items to be considered for inclusion are Committee objectives and expected committee activities, such as briefings and site visits.

Each Operations Plan will be supported by an appropriate meeting schedule. The meeting schedule will maximize efficiency of committee operations, taking full advantage of all virtual means of committee collaboration, such as conference calls and teleconferencing, consistent with FACA requirements. Committee meetings in person should be limited to the minimum necessary to accomplish the annual Operations Plan.

Annual Assessment of Committee Activities (“Performance Review”)

Each advisory committee shall submit an Annual Assessment of Committee Activities to ACMO by **December 1** of each year. The assessment, submitted by the appropriate

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program office in consultation with the DFO and signed by the program office leadership, will review each committee's effectiveness and its contributions to achieving Departmental priorities. The assessment will describe the quality of committee recommendations, the usefulness of communications between the affected program office and the committee, and actions taken to implement committee recommendations

Additional items to be included in the annual assessment include:

- Overall summary of the committee.
- Highlights of each committee meeting.
- Any committee products, such as recommendations or a report.
- Program Office assessment of the committee's work.
- Recommendation by the appropriate program official regarding committee activities.

DEFINITIONS

Advisory Committee - Unless specifically exempted by statute, any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Advisory Committee Member - An individual who serves by appointment or invitation on an advisory committee or subcommittee.

Advisory Committee Management Office (ACMO) - This office formulates and oversees the implementation of Department policies, laws, regulations and procedures governing committee management activities.

Committee Management Officer (CMO) - The VA employee designated by the Secretary to implement the provisions of section 8(b) of FACA and any delegated responsibilities of the agency head under FACA.

Attendance Log - Record of all persons who attend all or part of a committee meeting. This listing will be included in the summary of minutes of the meeting.

Balanced Membership - Membership must be fairly balanced in terms of points of view represented and the functions to be performed.

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Chair - Individual appointed to preside at committee meetings and ensure that all rules of order and conduct are maintained during each session.

Charter - Document which details the purpose for the establishment of a committee; the authority under which the committee is established; the function and structure of the committee. Also provides an estimate of the frequency of meetings, how members will be compensated, the annual cost of operating the committee, reports due from or about the committee, and the date the committee will terminate if the charter is not renewed.

Closed Meeting - A meeting or portion of a meeting that is not open to the public. Closure must be consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c).

Committee Management Secretariat (CMS) - The organization established pursuant to section 7(a) of FACA, which is responsible for all matters related to advisory committees and carries out the responsibilities of the Administrator under FACA.

Committee Meeting - Any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Consultant - A person who provides expertise to a Federal advisory committee on an intermittent basis.

Designated Federal Official (DFO) - The individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of FACA and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary Advisory Committee - An advisory committee established under the authority of an agency head or authorized (but not required) by statute; its establishment or termination is within the legal discretion of an agency head.

Disqualification - Refers to conflict of interest, prohibiting a member from providing advice on matters which have a direct or indirect effect on the member's organizational, institutional or financial interests.

Establishment Date - The date the committee's charter is filed with the appropriate standing committee of the Senate, House of Representatives, and the Library of

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Congress. It is the same as the date of the transmittal letter and remains the same throughout the committee's existence; may also be referred to as filing date.

The establishment date for committees established by Executive Order is the date the charter is received by the Director, Committee Management Secretariat, and GSA.

Ex-Officio Member - A Federal official who serves as a committee member and possesses expertise in the subject matter. This member has full voting rights unless prohibited by statute or restricted by the committee charter.

Expert - A person with excellent qualifications in a professional, scientific, technical or other field, who is regarded as an authority or a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Federal Register - The daily publication used as a means to provide the public with information regarding regulations and legal notices issued by Federal agencies.

Federal Register Notice - A specific document published in the Federal Register to inform the public of meetings of Federal advisory committees, the establishment of new committees, request names of potential nominees, or to provide other information.

Financial Operating Plan - Method of capturing the total costs related to the operation and staff costs of committees. This information is used when preparing the GSA Report, when a committee is being established to estimate the costs it will incur, and when a committee is being renewed to permit cost comparisons of prior and proposed expenditures.

Form 450 Confidential Financial Disclosure Report - When a Committee is required to submit financial disclosure reports, Committee members use this form to report their employment, investments, other income and assets, and their outside activities which may be used to assist in determining whether conflicts of interest exist.

Guest - An individual who has been requested by the DFO or other Federal official to share views or knowledge of a subject before the committee. A guest is not required or expected to perform a service, officially or unofficially. A guest may not attend closed meetings.

Non-Discretionary Advisory Committee - Another name for a committee established by statute. (See Statutory Advisory Committee.)

Non-Statutory Advisory Committee - Another name for a committee established by discretionary authority. (See Discretionary Advisory Committee.)

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Office of Government Ethics (OGE) - OGE is a separate executive agency established under the Ethics in Government Act of 1978, as amended (5 U.S.C. appendix 4, section 401). OGE provides overall direction of executive branch policies in preventing conflicts of interest on the part of officers and employees of all executive agencies.

Open Meeting - This meeting is held to review and discuss non-confidential data and documents, approve minutes of the previous meeting, discuss pending matters, make reports and presentations and plan future meeting dates.

Operational Committee - An operational committee is established to perform primarily operational as opposed to advisory functions and are specifically authorized by statute or Presidential directive, such as making or implementing government decisions or policy.

Partially Closed Meeting - A Federal advisory committee meeting that has open and closed sessions.

Quorum - A quorum is a majority (one more than half) of the committee's authorized membership including ex-officio members, unless the charter or statutory authority states otherwise.

Reappointment of Members - The reappointing of a member to the same committee.

Renewal of charter - The process used to document the continuance of an advisory committee.

Representative - A committee member who represents a particular stakeholder interest.

Secretary - As used in this Guide, the Secretary of VA.

Special Government Employee (SGE) - An officer or employee in the executive branch of the Federal Government who is appointed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.

Statutory Advisory Committee - A committee established by Congress or required to be established by Congress. These types of committees may also be referred to as non-discretionary.

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Subcommittee - A subcommittee is defined as a group, generally not subject to FACA, that reports to an advisory committee and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee. The activities of the subcommittees are covered by the charter of the parent committee.

Term of Office - This is the period of a committee member's service. VA terms are usually 2-3 years, unless the charter or establishing authority provides otherwise.

Termination Date - The date the committee ceases to function.

Vacancy - The vacancy that occurs when a committee member completes his/her designated term of service or when a member resigns, dies, or service is terminated for other reason(s).

APPENDIX

ETHICS RULES FOR ADVISORY COMMITTEE MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES

The purpose of this paper is to alert SGEs to potential ethics issues that may arise in connection with their service on a VA advisory committee so that they may seek advice from a VA deputy ethics official when advisable. Following such advice provides you with a safe harbor under the government ethics rules, which is not available if you follow advice from others.

Who is an SGE?

SGEs are individuals who have been appointed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Most VA advisory committee members are SGEs and are subject to the rules discussed in this paper. However, you are not an SGE if appointed to the committee to represent the official views of an outside organization and thus would not be subject to the rules discussed in this paper. You would also not be an SGE if you are already a regular employee of another Federal entity.

Financial Disclosure

SGEs are required under the Ethics in Government Act to file financial disclosure reports when first appointed and annually thereafter. However, the DAEO may exclude committee members from the filing requirement based on the particular duties and responsibilities of the committee and has done so with respect to many committees. Committee managers, who help administer the disclosure program, know whether committee members are required to file. **If you are required to file a financial disclosure report, you may not participate in a meeting until your report is reviewed and certified by an agency ethics official.** If required to file, you should submit your original completed report no later than two weeks prior to the first meeting of the year to your committee manager or to the OGC employee identified by your committee manager.

For Questions or Ethics Advice

For ethics questions or advice, contact VA's OGC Ethics Specialty Team at (202) 461-7694 or by email at GovernmentEthics@va.gov. Most VA ethics questions can be answered in a telephone call. More than half of ethics questions get **resolved on the same day** they are raised. Seeking ethics advice from an ethics official before

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acting and complying with that advice will in virtually all cases protect an SGE from criminal prosecution.

THE FEDERAL CRIMINAL CODE

Conflicts of Interest

18 U.S.C. § 208. Certain advisory committees have as part of their mission to recommend that VA take action with financial consequences to entities or individuals outside the Department. The main criminal conflict of interest statute in the Federal criminal code prohibits an SGE from participating personally and substantially in any particular matter, such as a grant review, that directly and predictably affects the financial interests of the SGE, his or her spouse, minor child, general partner, an organization in which the SGE serves as an officer, director, trustee, general partner, or employee, or an organization with which the SGE is negotiating, or with which the SGE has an arrangement, for prospective employment.

A particular matter is a matter that is narrowly focused upon the financial interests of specific persons, or a discrete and identifiable class of persons. By way of illustration, a grant review process and a decision to award a contract are both particular matters, but the process of selecting among broad policy options directed to the interests of a large and diverse group of persons is not a particular matter.

Examples of some actions an SGE would be prohibited from taking under this statute are:

- Reviewing a grant application submitted by a university that employs him. *Consistent with the well-established practice in the scientific community, the statute would require that the SGE “recuse” - disqualify - himself from participation in the review.*
- Participating in a decision to award a contract to a firm in which the SGE or his spouse or minor child holds publicly issued stock worth more than \$15,000.

Acting on Someone Else’s Behalf Before the Government

18 U.S.C. § 205. This law prohibits an SGE from representing a party, with or without compensation, before VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest that the SGE participated in personally and substantially as a government employee.

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For example, if an SGE participated in reviewing a proposal for a VA grant to support a certain study, he or she would be prohibited under this provision from sending a personal letter to VA advocating for an increase in the grant that resulted from the review.

Compensation for Representational Services

18 U.S.C. § 203. This law prohibits an SGE from receiving compensation for representational services rendered by the employee or another person before VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the SGE has participated personally and substantially as a government employee. By their nature, policy matters generally do not involve specific parties. Representational services are communications with the intent to influence or persuade the government.

For example: an SGE is employed with a law firm that is lobbying the VA on behalf of a Veterans organization against a particular proposal to remove inpatient treatment affecting 15 Veterans. If the SGE participated in any deliberations or made any recommendations regarding this proposal as a government employee, the SGE should structure his or her compensation with the law firm so that he or she does not share in revenues derived from the lobbying before VA.

Post-Government Employment Restrictions

18 U.S.C. § 207. The “post-Government employment” statute imposes a lifetime ban on a former SGE from representing another person or entity to VA or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the former SGE participated personally and substantially while serving in the government.

Bribery

18 U.S.C. § 201. The bribery statute prohibits Federal employees, including SGEs, from seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of an official act.

Foreign Agents

18 U.S.C. § 219. An SGE is prohibited from acting as an agent of a foreign principal registered under the Foreign Agents Registration Act unless the head of the agency certifies that employment of the SGE is in the national interest.

STANDARDS OF ETHICAL CONDUCT

The Appearance of a Conflict of Interest

5 C.F.R. § 2635.502. There may be circumstances in which an SGE's participation in committee business would raise a question regarding the SGE's impartiality.

ETHICS RULES FOR ADVISORY COMMITTEE MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES

For example, if an SGE is asked to review a grant application submitted by the SGE's mentor, or someone with whom the SGE has a close personal or professional relationship, the situation may raise a concern about the SGE's impartiality in the review. In such circumstances, the SGE should discuss the relationship with the DAEO before participating.

Gifts

5 C.F.R. § 2635.202. A gift given to an SGE because of his or her service on a VA advisory committee or given by a prohibited source, which includes an entity whose interests are affected financially by agency decisions, would obviously raise concerns. Please consult with a deputy ethics official should this situation arise. Gifts given to the SGE because of his or her private sector position or achievements generally are not problematic.

An exception often applicable to allow SGEs to accept gifts: An SGE may accept meals, lodgings, transportation, and other benefits resulting from his or her outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his or her official status.

For example: an SGE member of the Capital Asset Realignment for Enhanced Services Advisory Committee has a consulting business. She may accept an invitation to a \$50 dinner from her client, a Veterans Service Organization, unless the invitation was extended in order to discuss the activities of the committee.

Charitable Fundraising

5 C.F.R. § 2635.808. An SGE may engage in fundraising in a personal capacity (not using or permitting others to use his or her advisory committee membership), if he or she does not personally solicit from anyone known to have interests that may be

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substantially affected by his or her committee duties. If you have questions concerning particular fundraising events or activities, please consult with a deputy ethics official.

Teaching, Speaking and Writing

5 C.F.R. § 2635.807. There are some circumstances where SGEs may not receive compensation for teaching or for certain speaking and writing. For most non-curriculum teaching and most speaking and writing, SGEs may not be paid if the activity “relates to the employee’s official duties.” The “relatedness” test is met for such activities if the invitation was extended to the SGE either primarily because of the member’s committee position rather than his or her expertise or by someone whose interests may be affected substantially by the member’s government duties, or if the information conveyed draws substantially on ideas not publicly available.

Additionally, any SGE expected to work no more than 60 days a year is prohibited from accepting compensation if the subject matter deals significantly with *any specific party matter* to which the SGE is assigned or was assigned within the past year of his or her current SGE appointment. If the SGE is to work more than 60 days a year, he or she is prohibited from accepting compensation if the subject deals significantly with any particular matter to which the SGE is assigned or was assigned within the past year of his or her current SGE appointment.

For example: an SGE serves on an advisory committee concerned with moving and closing medical clinics. Because his service under that appointment is not expected to exceed 60 days, the SGE may accept compensation for an article about the hardships a community may endure with the loss of VA clinics even though he is reviewing proposals to move clinics. The proposals which are the focus of the advisory committee deliberations are not particular matters involving specific parties.

Expert Testimony

5 C.F.R. § 2635.805. An SGE may not serve as an expert witness, except for the United States, in any proceeding in which the United States is a party or has a direct and substantial interest, if: (1) He or she has participated as an employee or special government employee in the particular subject matter of the proceeding; or (2) His or her employing agency is a party or has a direct and substantial interest and he or she: (a) Is appointed by the President; (b) Serves on a commission established by statute; or (c) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

OTHER PROHIBITIONS

Foreign Gifts

5 U.S.C. § 7342. This law limits gifts SGEs can accept from foreign governments and international organizations to \$375 in value. A prohibited gift even includes travel expenses exceeding \$375 in value unless the travel takes place entirely outside the United States. The restriction extends to the spouse and dependents of the SGE. SGEs *can* accept travel and related expenses from a foreign government as part of U.S. Government duties.

Hatch Act

5 U.S.C. §§ 7321-7326. The Hatch Act rules limiting political activities apply to SGEs only while they are conducting government business. Details are available from a deputy ethics official.

14 General Principles of Ethical Conduct

5 C.F.R. § 2635.101(b) - Principles of Ethical Conduct

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.
7. Employees shall not use public office for private gain.

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8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes—that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

How to Get Ethics Advice

Call, Write, or Email:

Renée Szybala
Acting General Counsel and Acting DAEO
Renee.Szybala@va.gov

Jonathan Gurland
Senior Attorney and Deputy Ethics Official
Jonathan.Gurland@va.gov

Jane Gutcher
General Attorney and Deputy Ethics Official
Jane.Gutcher@va.gov

Chris Britt
General Attorney and Deputy Ethics Official
Christopher.Britt@va.gov

Carol Borden
General Attorney and Deputy Ethics Official
Carol.Lane@va.gov

Purnima Boominathan
General Attorney and Deputy Ethics Official
Purnima.Boominathan@va.gov

Office of the General Counsel (023)
VA Central Office
810 Vermont Avenue, NW
Washington, DC 20420
Telephone: (202) 461-7694
Telephone: (202) 461-6000
Facsimile: (202) 273-6403
Email: GovernmentEthics@va.gov

ETHICS REVIEW

I certify that I have completed my review of or received training on “Ethics Rules for Advisory Committee Members Who are Special Government Employees (SGE).”

SPECIAL GOVERNMENT EMPLOYEE:

Signature

Date

PRINT NAME

Advisory Committee Name (Print Full Name of Committee)

UPON COMPLETING REVIEW, PLEASE EMAIL, MAIL, OR FAX THIS PAGE TO:

**OFFICE OF THE GENERAL COUNSEL (023C)
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FOR MORE INFORMATION

CONTACT

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